IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4442 of 2004
Date of decision: December 15, 2006.

Jangir Singh & Ors.

...**Petitioner(s)**

v.

Nirmal Kaur & Ors.

...**Respondent(s)**

Present: Shri A.S. Jattana, Advocate for the petitioner.

Surya Kant, J. (Oral)

This revision petition is directed against the order dated 24th July, 2004 passed by the learned Civil Judge (Junior Division), Barnala whereby an application moved by the respondent-plaintiff under Order 22 Rule 4 read with Order 1 Rule 10 CPC for impleading the legal representatives of the deceased defendant- Jarnail Singh, has been allowed.

The respondent-plaintiff is widow of Gurjant Singh, who was son of petitioner No.1. She has filed a suit for declaration in respect of her ownership and possessory rights qua the estate of her deceased husband. In the said civil suit, respondent-plaintiff impleaded her father-in-law (Jangir Singh), mother-in-law (Jarnail Kaur) and two brothers of her deceased husband.

When notice of the said civil suit was issued to the defendants, it was reported by the process serving agency that the defendant Jarnail Kaur, namely, mother-in-law of the plaintiff was no longer alive and had died.

Without wasting time, the respondent-plaintiff moved an application under Order 22 Rule 4 read with Order 1 Rule 10 CPC for impleading the legal representatives of deceased Jarnail Kaur. Her application has been allowed by the learned civil court vide the impugned order.

The only contention raised by Learned Counsel for the petitioners is that Jarnail Kaur had died much before filing of the civil suit, therefore, the suit against a dead person being nullity, the learned trial court ought not have permitted the plaintiff to bring legal representatives of Jarnail Kaur on record. Reliance has been placed by him on a judgment of the Bombay High Court in the case of **M.B. Development Corporation v. Manilal Patel & Co.**, 2001(3) Civil Court Cases, 473.

I am afraid, the contention raised by Learned Counsel for the petitioners is totally devoid of any merit as the same has been sqaurely answered against him by the Hon'ble Supreme Court in the case of **Karuppaswamy and others v. C. Ramamurthy**, AIR 1993 SC 2324. In somewhat similar circumstances, there the plaintiff became aware of the defendant's death from the remarks on the returned summons and immediate thereafter, the plaintiff moved an application under Order 22 Rule 4 CPC. Holding such such an application was maintainable, the Apex Court held that proviso to Section 21(1) of the Limitation Act, 1963 can be pressed into service to correct such kind of errors.

The respondent-plaintiff, who is a young widow of one of the son of petitioner No.1, and is undisputedly residing in a different village, had obviously no knowledge about the death of her mother-in-law and having come to know about the same from the remarks made by the process serving agency, she moved an application in question, which, in the facts

and circumstances of the present case, and having regard to the view expressed by the Apex Court in **Karuppaswamy and others**' case (supra) has been rightly allowed.

Consequently, I do not find any merit in this revision petition, which is, accordingly, dismissed.

December 15, 2006. [**Surya Kant**]
kadyan **Judge**